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U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

FEB 06 2004

FILE: [redacted] Office: ST. PAUL, MN Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130) (WAC 00 034 54038). He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States with his spouse.

The district director concluded that the negative factors in the application outweighed the positive factor of the applicant's marriage to a U.S. citizen. The application was denied accordingly. *See* Decision of District Director, dated April 12, 2001.

On appeal, counsel asserts that the Immigration and Naturalization Service [Citizenship and Immigration Services] misconstrues section 212(h) of the Act and misstates the law in denying the waiver application. Counsel contends that extreme hardship to the applicant's spouse is demonstrated by the application evidencing her mental illness, employment and benefits and her need to care for her elderly parents.

In support of these assertions, counsel submits a letter from the psychotherapist treating the applicant, dated March 18, 2003. The record also contains a letter from the applicant's spouse, dated May 17, 2002; a letter from the parents of the applicant's spouse, undated; a letter from the sister and brother-in-law of the applicant's spouse, dated April 12, 2002; two letters from mental health professionals, dated April 6 and April 3, 2002, respectively; a letter from the Human Resources Manager of the employer of the applicant's spouse, dated April 5, 2002; letters of support; a copy of the applicant's Canadian passport; a copy of the Canadian birth certificate of the applicant; a copy of the marriage certificate for the applicant and his spouse; a letter verifying the employment of the applicant's spouse; copies of income tax returns filed by the applicant's spouse and copies of Canadian conviction records for the applicant. The entire record was considered in rendering a decision on the appeal.

The record reflects the following criminal convictions for the applicant:

On June 5, 1981, the applicant was convicted of Theft under $200.

On December 22, 1981, the applicant was convicted of Theft under $200.

On September 23, 1982, the applicant was convicted of Driving Under the Influence.

On April 26, 1985, the applicant was convicted of Driving Under the Influence.

On October 3, 1985, the applicant was convicted of Driving Under the Influence.

On March 5, 1986, the applicant was convicted of Driving Under the Influence and Failure to Stop at Scene of Accident.

On November 16, 1994, the applicant was convicted of Theft of a Sum of Money Exceeding $1000.

On October 22, 1996, the applicant was convicted of Driving Under the Influence and Failure to Stop at Scene of Accident.

On July 12, 1999, the applicant was convicted of Driving Under the Influence.

On April 8, 2002, the applicant was convicted of Driving Under the Influence in the United States (Pennington County, SD).

On September 30, 2002, the applicant was convicted of Driving Under the Influence in the United States (Pennington County, SD).

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
>
> > (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The applicant has convictions for theft and failure to stop at the scene of an accident in an attempt to avoid responsibility that qualify as CIMTs under section 212(a)(2)(A)(i)(I) the Act.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The BIA noted in *Cervantes-Gonzalez*, that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they

wed because she was aware she might have to face the decision of parting from her husband or following him to Mexico in the event he was ordered removed from the United States. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship if he were deported. *Id.*

In the present application, the applicant married his U.S. citizen wife after he was convicted of several crimes, some of which constitute CIMTs. The applicant's wife states that she was aware of this situation by stating, "We were married on April 24, 1999. [The applicant] had shared with me some of his background and past problems." *See* Letter from [redacted] dated May 17, 2002. The AAO notes that at the time the applicant married his current spouse, she was aware that he faced challenges to immigration as evidenced by her vague statement that she "made arrangements fo[redacted] to come to the US [sic]." *Id.* This fact undermines the applicant's claim of extreme hardship to his spouse caused by his inadmissibility to the United States.

On appeal, counsel asserts that departing from the United States would impose extreme hardship on the applicant's wife. Counsel cites the bouts of depression and anxiety suffered by the applicant's wife and states that if she left the United States, the applicant's wife would be forced to abandon her existing treatment and support group. *See* Letters from [redacted] dated April 6 and April 3, 2002, respectively. Counsel further states that the applicant's wife is solely responsible for caring for her elderly parents who suffer from serious medical afflictions including diabetes suffered by her father and a heart problem suffered by her mother. *See* Letter of [redacted] dated May 17, 2002. In addition, counsel points to the hardship to the applicant's wife posed by ending her fifteen-year career with one company, which affords her medical insurance, life insurance and disability programs. *See* Letter of John F. Hanan, Merillat Industries, dated April 5, 2002.

However, counsel does not establish extreme hardship to the applicant's qualifying relative if she remains in the United States maintaining her career, care of her elderly parents and treatment for her mental health. Counsel provides a letter from [redacted] to support the assertion that separating the applicant from his wife will "place her at 'high risk' to regress." *See* Letter from [redacted] Ph.D/LPC, dated April 6, 2002. The statements in the letter are speculative regarding the possible effects of removal of the applicant from the United States to the mental condition of the applicant's spouse. Further, the record also contains a letter from [redacted] stating that she has cared for the applicant's wife as a patient for several years. *See* Letter from [redacted] dated April 3, 2002. The AAO notes that the observations of [redacted] do not indicate his relationship with the applicant's wife and therefore, their medical value cannot be assessed based on the record. Further, the observations of [redacted] the CNP/PAC treating the applicant's wife, are vague and unsubstantiated, referring to the applicant's wife as "very emotionally frazzled." *Id.* The record fails to adequately demonstrate that the applicant's wife will experience extreme emotional, mental or physical hardship as a result of the applicant's inadmissibility to the United States. Financially, the record indicates that the applicant has been unemployed since entering the United States and counsel makes no assertions, beyond unsubstantiated statements of family and friends, establishing financial hardship to the applicant's spouse if she remains in the United States.

The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to depart from the United States as a result of denial of the applicant's waiver request. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her husband. However, her situation, based on the record, is

typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The record does not demonstrate hardship amounting to extreme hardship in this application.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.